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Attorneys for Plaintiff
DAVID KAYNE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION – E-FILING

DAVID KAYNE, an individual citizen
of Georgia,

Plaintiff,

vs.

THE THOMAS KINKADE COMPANY,
formerly known as MEDIA ARTS
GROUP, INC., a Delaware Corporation,

Defendant.

Case No. C 07-4721 JF (RS)

**REPLY DECLARATION OF
CHARLES L. COLEMAN, III IN
SUPPORT OF PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

I, Charles L. Coleman, III, hereby declare that:

1. I am a member of the firm of Holland & Knight LLP and am admitted to practice before this Court. I am lead counsel for plaintiff David Kayne ("Mr. Kayne") in this matter. I submit this Reply Declaration in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. Except as otherwise indicated below, I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify to such facts without waiver of any applicable privilege.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Civil Docket for the *Kayne v. The Thomas Kincade Company* matter (Case # 1:06-cv-02168-CAP), which was assigned Judge Pannell, Jr, that I printed using PACER.



CHARLES L. COLEMAN, III

4839272_v1

EXHIBIT 1

4months, APPEAL, CLOSED

**U.S. District Court
Northern District of Georgia (Atlanta)
CIVIL DOCKET FOR CASE #: 1:06-cv-02168-CAP**

Kayne v. The Thomas Kinkade Company
Assigned to: Judge Charles A. Pannell, Jr
Case in other court: USCA-11th Circuit, 07-11983-HH
Superior Court of Fulton County,
2006CV121748
Cause: 28:1441 Petition for Removal- Declaratory Judgemen

Date Filed: 09/12/2006
Date Terminated: 03/29/2007
Jury Demand: None
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff**David Kayne**

represented by **Lawrence S. Burnat**
Schreeder Wheeler & Flint, LLP
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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V.

Defendant

The Thomas Kinkade Company
formerly known as
Media Arts Group, Inc.

represented by **Charles E. Weir**
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Date Filed	#	Docket Text
09/12/2006	<u>1</u>	NOTICE OF REMOVAL with COMPLAINT. Consent form to proceed before U.S. Magistrate and pretrial instructions provided. (Filing fee \$ 350 receipt number 555746), filed by The Thomas Kinkade Company. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit A-2# <u>3</u> Affidavit # <u>4</u> Civil Cover Sheet)(hfm) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 09/15/2006)
09/12/2006	<u>2</u>	AMENDED COMPLAINT against The Thomas Kinkade Company, filed by David Kayne. (Filed at State Court and contained within Notice of Removal)(hfm) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 09/15/2006)
09/12/2006	<u>3</u>	MOTION for Temporary Restraining Order by David Kayne. (Filed in State Court and contained within Notice of Removal) (Attachments: # <u>1</u> Brief in Support# <u>2</u> Text of Proposed Order)(hfm) (Entered: 09/15/2006)
09/15/2006	<u>4</u>	NOTICE of Hearing on Motion re: <u>3</u> MOTION for Temporary Restraining Order & Preliminary Injunction. Motion Hearing set for 10/25/2006 10:00 AM in Courtroom 2307 before Judge Charles A. Pannell Jr.. (yrm) (Entered: 09/15/2006)
09/21/2006	<u>5</u>	Corporate Disclosures pursuant to Rule 7.1 by The Thomas Kinkade Company.(Lang, Eric) (Entered: 09/21/2006)
09/22/2006	<u>6</u>	Withdrawal of Motion <u>3</u> MOTION for Temporary Restraining Order filed by David Kayne, filed by David Kayne. (Burnat, Lawrence) (Entered: 09/22/2006)

09/25/2006		NOTICE OF CANCELLATION of Hearing re: 4 NOTICE of Hearing on Motion re: 3 MOTION for Temporary Restraining Order & Preliminary Injunction. Motion Hearing set for 10/25/2006 10:00 AM in Courtroom 2307 before Judge Charles A. Pannell Jr.. (yrm) (yrm) (Entered: 09/25/2006)
09/25/2006	<u>8</u>	DOCUMENT FILED IN ERRORAPPLICATION for Admission of Eric Charles Lang, Pro Hac Vice filed by The Thomas Kinkade Company.Filing Fee received \$150.00, Receipt #556201. (Attachments: # <u>1</u> Proposed Order)(epm) Modified on 9/27/2006 (epm). (Entered: 09/27/2006)
09/25/2006	<u>9</u>	CERTIFICATE OF SERVICE re <u>8</u> APPLICATION for Admission of Eric Charles Lang Pro Hac Vice filed by The Thomas Kinkade Company. (epm) (Entered: 09/27/2006)
09/25/2006	<u>10</u>	#8 REDOCKETED AS APPLICATION for Admission of Charles E. Weir, Pro Hac Vice filed by The Thomas Kinkade Company.Filing Fee received \$150.00, Receipt #556201. (Attachments: # <u>1</u> Proposed Order) (epm) (Entered: 09/27/2006)
09/25/2006		Notification of Docket Correction re <u>8</u> APPLICATION for Admission of Eric Charles Lang Pro Hac Vice. The wrong attorney was selected for PHV Admission; redocketed as pleading #10 with Attorney Charles E. Weir. (epm) (Entered: 09/27/2006)
09/27/2006	<u>7</u>	PROPOSED CONSENT ORDER Consent Order Extending Time for Defendant The Thomas Kinkade Company to Answer. (Lang, Eric) (Entered: 09/27/2006)
10/03/2006	<u>11</u>	ORDER GRANTING <u>10</u> Application for Admission of Charles E. Weir, Pro Hac Vice. Signed by Judge Charles A. Pannell Jr. on 10/3/06. (epm) (Entered: 10/03/2006)
10/03/2006	<u>12</u>	CONSENT ORDER TO EXTEND TIME through 10/6/06 for Defendant to Answer Complaint. Signed by Judge Charles A. Pannell Jr. on 10/3/06. (epm) (Entered: 10/04/2006)
10/06/2006	<u>13</u>	DOCUMENT FILED IN ERROR - MOTION to Compel Arbitration Pursuant to 9 USC Sec. 4 and to Dismiss all Claims of david Kayne Pursuant to FRCP 12(b)(1) and 12(b)(6) with Brief In Support by The Thomas Kinkade Company. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u> # <u>7</u> # <u>8</u> # <u>9</u> # <u>10</u> # <u>11</u> # <u>12</u>)(Lang, Eric) Modified on 10/11/2006 (epm). (Entered: 10/06/2006)
10/06/2006	<u>14</u>	Pldg 13 REDOCKETED AS - MOTION to Compel Arbitration pursuant to 9 USC § 4; and, MOTION to Dismiss all Claims of David Kayne pursuant to FRCP 12(b)(1) and 12(b)(6) with Brief In Support filed by The Thomas Kinkade Company. (Attachments: # <u>1</u> Memorandum in Support# <u>2</u> Declaration of Robert C. Murray# <u>3</u> Exhibit A# <u>4</u> Exhibit B# <u>5</u> Exhibit C# <u>6</u> Exhibit D# <u>7</u> Exhibit E# <u>8</u> Exhibit F# <u>9</u> Exhibit G# <u>10</u> Declaration of Charles E. Weir# <u>11</u> Exhibit A 1# <u>12</u> Exhibit B 1)(epm) (Entered: 10/11/2006)

10/06/2006		Notification of Docket Correction re <u>13</u> MOTION to Compel Arbitration Pursuant to 9 USC Sec. 4 and to Dismiss all Claims of david Kayne Pursuant to FRCP 12(b)(1) and 12(b)(6). This document was filed using the wrong event; pleading redocketed as <u>14</u> Motion to Compel and Motion to Dismiss. (epm) (Entered: 10/11/2006)
10/17/2006	<u>15</u>	MOTION for Extension of Time File Response to Defendant's Motion to Compel Arbitration Pursuant to 9 USC 4 and Motion to Dismiss all Claims of David Kayne pursuant to FRCP 12(b)(6) re: <u>14</u> MOTION to Compel ArbitrationMOTION to Dismiss MOTION to Compel ArbitrationMOTION to Dismiss by David Kayne. (Attachments: # <u>1</u> Text of Proposed Order Consent Order)(Burnat, Lawrence) (Entered: 10/17/2006)
10/18/2006	<u>16</u>	ORDER GRANTING <u>15</u> Consent Motion for Extension of Time to 11/3/06 for Plaintiff David Kane to Respond to Defendant's Motion. Signed by Judge Charles A. Pannell Jr. on 10/18/06. (epm) (Entered: 10/19/2006)
10/27/2006	<u>17</u>	MOTION for Leave to File Amended Petition for Declaratory Judgment and Injunctive Reliefby David Kayne. (Attachments: # <u>1</u> Brief In Support of Motion for Leave to File Amended Petition# <u>2</u> Exhibit Second Amended Petition for Declaratory Judgment and Injunctive Relief) (Burnat, Lawrence) (Entered: 10/27/2006)
10/30/2006	<u>18</u>	NOTICE of Change of Address for Lawrence S. Burnat, counsel for David Kayne (Burnat, Lawrence) (Entered: 10/30/2006)
11/03/2006	<u>19</u>	MOTION for Leave to File Excess Pages with Brief In Support by David Kayne. (Attachments: # <u>1</u> Brief Plaintiff's Response to Motion to Compel# <u>2</u> Exhibit A)(Burnat, Lawrence) Modified on 11/13/2006 to correct docket text to accurately reflect e-filed pleading (epm). (Entered: 11/03/2006)
11/03/2006	<u>20</u>	AFFIDAVIT of David Kayne. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E# <u>6</u> Exhibit F# <u>7</u> Exhibit G# <u>8</u> Exhibit H# <u>9</u> Exhibit I)(Burnat, Lawrence) Modified text on 11/13/2006 (epm). (Entered: 11/03/2006)
11/03/2006	<u>21</u>	RESPONSE in Support re <u>14</u> MOTION to Compel Arbitration and MOTION to Dismiss filed by David Kayne. (Attachments: # <u>1</u> Exhibit A) (Burnat, Lawrence) Modified on 11/13/2006 to remove duplicate text. (epm). (Entered: 11/03/2006)
11/03/2006	<u>22</u>	MOTION for Oral Argument by David Kayne. (Burnat, Lawrence) (Entered: 11/03/2006)
11/03/2006	<u>23</u>	MOTION to Strike <i>Declaration of Robert C. Murray</i> with Brief In Support by David Kayne. (Attachments: # <u>1</u> Brief In Support of Motion to Strike)(Burnat, Lawrence) (Entered: 11/03/2006)
11/06/2006	<u>24</u>	RESPONSE in Opposition to re <u>17</u> MOTION for Leave to File a Second

		Amended Petition for Declaratory Judgment and Injunctive Relief <i>filed by The Thomas Kinkade Company. (Lang, Eric) Modified on 11/13/2006 to correct docket text to accurately reflect e-filed pleading (epm). (Entered: 11/06/2006)</i>
11/20/2006	<u>25</u>	RESPONSE in Opposition re <u>23</u> MOTION to Strike <i>Declaration of Robert C. Murray</i> filed by The Thomas Kinkade Company. (Attachments: # <u>1</u> Declaration of Tori Amarillas In Support of Defendant's Motion to Compel Arbitration and Dismiss the Claims of David Kayne# <u>2</u> Defendant's Reply Memorandum in Further Support of its Motion to Compel Arbitration and Dismiss all Claims of David Kayne# <u>3</u> Certificate of Service)(Lang, Eric) (Entered: 11/20/2006)
11/21/2006	<u>26</u>	REPLY BRIEF re <u>17</u> MOTION for Leave to File Amended Petition for Declaratory Judgment and Injunctive Relief filed by David Kayne. (Burnat, Lawrence) (Entered: 11/21/2006)
11/27/2006		Submission of <u>14</u> MOTION to Compel Arbitration, MOTION to Dismiss, <u>17</u> MOTION for Leave to File Amended Petition for Declaratory Judgment and Injunctive Relief, <u>19</u> MOTION for Leave to File Excess Pages, <u>22</u> MOTION for Oral Argument,submitted to District Judge Charles A. Pannell. (adg) (Entered: 11/27/2006)
11/29/2006	<u>27</u>	REPLY BRIEF re <u>23</u> MOTION to Strike <i>Declaration of Robert C. Murray</i> filed by David Kayne. (Burnat, Lawrence) (Entered: 11/29/2006)
11/29/2006	<u>28</u>	MOTION to Strike <i>Declaration of Tori Amarillas</i> with Brief In Support by David Kayne. (Attachments: # <u>1</u> Brief Supporting Motion to Strike Declaration of Tori Amarillas)(Burnat, Lawrence) (Entered: 11/29/2006)
11/30/2006	<u>29</u>	MOTION for Leave to File <i>Sur-Reply to Defendant's Reply Memorandum in Further Support of Its Motion to Compel Arbitration and Dismiss All Claims of David Kayne</i> with Brief In Support by David Kayne. (Attachments: # <u>1</u> Proposed Sur-Reply# <u>2</u> Exhibit A to Plaintiff's Sur-Reply)(Burnat, Lawrence) (Entered: 11/30/2006)
12/06/2006		Submission of <u>23</u> MOTION to Strike <i>Declaration of Robert C. Murray</i> , submitted to District Judge Charles A. Pannell. (FILE IN CHAMBERS) (adg) (Entered: 12/06/2006)
12/07/2006	<u>30</u>	RESPONSE in Opposition re <u>28</u> MOTION to Strike <i>Declaration of Tori Amarillas</i> filed by The Thomas Kinkade Company. (Lang, Eric) (Entered: 12/07/2006)
12/07/2006	<u>31</u>	Amended Declaration of Tori Amarillas in Support re <u>14</u> Motion to Compel Arbitration and Dismiss the Claims of David Kayne filed by The Thomas Kinkade Company. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Affidavit Amended Declaration of Tori Amarillas in support of Defendants Motion to Compel Arbitration and Dismiss the Claims of David Kayne)(Lang, Eric) Modified on 12/18/2006 to remove double wording(adg). (Entered: 12/07/2006)
12/07/2006	<u>32</u>	Amended Declaration of Robert C. Murray in Support of <u>14</u> Motion to

		Compel Arbitration and Dismiss the Claims of David Kayne filed by The Thomas Kinkade Company. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit A# <u>3</u> Exhibit B# <u>4</u> Exhibit C# <u>5</u> Exhibit D# <u>6</u> Exhibit E# <u>7</u> Exhibit F# <u>8</u> Exhibit G)(Lang, Eric) Modified on 12/18/2006 to remove double wording (adg). (Entered: 12/07/2006)
12/12/2006	<u>33</u>	REPLY BRIEF re 28 MOTION to Strike <i>Declaration of Tori Amarillas</i> filed by David Kayne. (Burnat, Lawrence) (Entered: 12/12/2006)
12/12/2006	<u>34</u>	MOTION to Strike <i>The Amended Declarations of Tori Amarillas and Robert Murray</i> with Brief In Support by David Kayne. (Attachments: # <u>1</u> Brief In Support of Motion to Strike Amended Declarations of Amarillas and Murray)(Burnat, Lawrence) (Entered: 12/12/2006)
12/15/2006		Submission of <u>28</u> MOTION to Strike <i>Declaration of Tori Amarillas</i> , submitted to District Judge Charles A. Pannell. (FILE IN CHAMBERS) (adg) (Entered: 12/15/2006)
01/05/2007		Submission of <u>29</u> MOTION for Leave to File <i>Sur-Reply to Defendant's Reply Memorandum in Further Support of Its Motion to Compel Arbitration and Dismiss All Claims of David Kayne</i> , submitted to District Judge Charles A. Pannell. (FILE IN CHAMBERS) (dfb) (Entered: 01/05/2007)
01/17/2007		Submission of <u>34</u> MOTION to Strike <i>The Amended Declarations of Tori Amarillas and Robert Murray</i> , submitted to District Judge Charles A. Pannell. (File in Chambers) (adg) (Entered: 01/17/2007)
03/29/2007	<u>35</u>	ORDER GRANTING <u>17</u> Motion for Leave to File and Amended Complaint; GRANTING <u>19</u> Motion for Leave to File Excess Pages; DENYING <u>22</u> Motion for Oral Argument; DENYING <u>23</u> Motion to Strike the original declaration of Robert Murray ; DENYING <u>28</u> Motion to Strike the original declaration of Tori Amarillas; GRANTING <u>29</u> Motion for Leave to File a surreply; DENYING <u>34</u> Motion to Strike the amended declarations of Tori Amarillas and Robert Murray. Because all of the issues remaining in the case at hand are referable to arbitration and the arbitration will take place in California, it would serve no purpose for the court to retain jurisdiction and stay the action pending thearbitration. The Court GRANTS <u>14</u> Motion to Compel Arbitration to the extent it seeks dismissal of the action and an order compelling arbitration. The Clerk is DIRECTED to close the file Signed by Judge Charles A. Pannell Jr. on 3/29/2007. (adg) (Entered: 03/29/2007)
03/29/2007		Civil Case Terminated. (adg) (Entered: 03/29/2007)
04/27/2007	<u>36</u>	Second AMENDED COMPLAINT against all defendants, filed by David Kayne.(Burnat, Lawrence) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 04/27/2007)
04/27/2007	<u>37</u>	NOTICE OF APPEAL as to <u>35</u> Order on Motion to Strike, Order on Motion for Leave to File,, Order on Motion to Compel, Order on Motion to Dismiss,, Order on Motion for Leave to File Excess Pages, Order on

		Motion for Oral Argument,,,,,,,,,,,,,,,,,,,,, by David Kayne. Transcript Order Form due on 5/11/2007 (Burnat, Lawrence) (Entered: 04/27/2007)
04/27/2007	<u>39</u>	USCA Appeal Fees received \$ 455.00 receipt number 564302 re: <u>37</u> Notice of Appeal filed by David Kayne. (pjm) (Entered: 04/30/2007)
04/30/2007	<u>38</u>	Transmission of Certified Copy of Notice of Appeal, Order and Docket Sheet to US Court of Appeals re: <u>37</u> Notice of Appeal. (pjm) (Entered: 04/30/2007)
04/30/2007	<u>40</u>	USCA Appeal Fees forwarded to USCA re: <u>37</u> Notice of Appeal filed by David Kayne. Case Appealed to USCA-11th Circuit. Case Number 00-00000-00. (pjm) (Entered: 04/30/2007)
05/03/2007	<u>41</u>	USCA Acknowledgment of <u>37</u> Notice of Appeal filed by David Kayne. Case Appealed to USCA-11th Circuit. Case Number 07-11983-HH. (pjm) (Entered: 05/07/2007)
05/03/2007	<u>42</u>	USCA Acknowledgment of USCA Appeal Fees re: <u>37</u> Notice of Appeal filed by David Kayne. Case Appealed to USCA-11th Circuit. Case Number 07-11983-HH. (pjm) (Entered: 05/07/2007)
05/11/2007	<u>43</u>	TRANSCRIPT ORDER FORM re: <u>37</u> Notice of Appeal. No Hrgs. USCA Appeal Number 07-11983-HH. Certificate of Readiness due on 5/25/2007. (pjm) (Entered: 05/14/2007)
05/15/2007		CERTIFICATE OF READINESS of Appeal Record re: <u>37</u> Notice of Appeal filed by David Kayne. USCA Case Number 07-11983-HH. (2 Vols of Pldgs) (pjm) (Entered: 05/15/2007)
05/15/2007	<u>44</u>	Certified copy of CERTIFICATE OF READINESS transmitted to USCA re: <u>37</u> Notice of Appeal. Case Appealed to USCA-11th Circuit. Case Number 07-11983-HH. (pjm) (Entered: 05/15/2007)
05/21/2007	<u>45</u>	USCA Acknowledgment of Certificate of Readiness re: <u>37</u> Notice of Appeal filed by David Kayne. Case Appealed to USCA-11th Circuit. Case Number 07-11983-HH. (pjm) (Entered: 05/22/2007)

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